

REMARKS

I. Claim Amendments

Claims are amended as set forth above, in part, to cancel claim 12 and include subject matter thereof in claim 1 and to amend claim 4. None of the amendments of the claims is made for any purpose relating to patentability, and Applicants do not intend the modification of the claims to be interpreted as affecting the scope of their claimed invention or to suggest that the claims should be given anything other than the full, open-ended interpretation to which their claim language is entitled.

II. Election of Species Requirement Is Traversed

It was stated in the Office Action that the application contains claims directed to the following patentably distinct species of the claimed invention:

a method of producing a heterologous peptide, polypeptide, or protein in a lactic acid bacterium, wherein the lactic acid bacterium comprises a regulatable promoter which is regulated by a factor selected from the group consisting of pH, growth temperature, the oxygen content, a temperature shift eliciting the expression of a heat shock gene, the composition of the growth medium including the ionic strength and the NaCl content, the presence/absence of an essential cell constituent or precursors therefor, accumulation of a metabolite intracellularly or in the medium, the growth phase of the lactic acid bacterium, and the growth rate of the lactic acid bacterium.

It was further stated that claims 1-4 are considered generic. Applicants were required to select a single disclosed species for prosecution on the merits and list all claims readable on such species. Office Action, p. 2. In a July 12, 2004 telephone conversation between Applicant's undersigned counsel and the Examiner, Examiner kindly confirmed that the election of species requirement was related to the regulatable promoter, recited in original claim 4.

Applicants traverse the election requirement, and elect the species "accumulation of a metabolite intracellularly or in the medium". Claims 1-29 read on this species. Applicants submit that the election of species was misplaced at least because,

notwithstanding the fact that the various identified species are patentably distinct from each other, a single search could have been conducted for all of the species.

Nonetheless, the species requirement is moot since Applicants cancelled the recitation of specific species from claim 4 (other than the elected species).

III. Request for Allowance

Applicants respectfully submit that all claims are now in condition for allowance, an indication of which is respectfully requested.

It is believed that no additional fee is due in connection with this filing. However, in the event that any other fees are necessary, the Commissioner is hereby authorized to charge our Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

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By:



Stanislaus Aksman
Registration No. 28,562

HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Suite 1200
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

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